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KEN BENNETT
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CHAPTER 303

SENATE BILL 1201

AN ACT

AMENDING SECTIONS 41-1511, 42-2003, 42-12057, 43-1083.01 AND 43-1164.01,
ARIZONA REVISED STATUTES; RELATING TO RENEWABLE ENERGY TAX INCENTIVES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 41-1511, Arizona Revised Statutes, is amended to read:

41-1511. Renewable energy tax incentives; qualification; definitions

A. Tax incentives are allowed for expanding or locating qualified renewable energy operations in this state, including income tax credits pursuant to sections 43-1083.01 and 43-1164.01 and property tax classification pursuant to section 42-12006, paragraph 9.

B. To be eligible for the tax incentives, a renewable energy business must apply to the department of commerce, on a form prescribed by the department, for ~~certification~~ PREAPPROVAL of the business as qualifying for the incentives. The application must include:

1. The applicant's name, address, telephone number and federal taxpayer identification number or numbers.

2. The name, address, telephone number and e-mail address of a contact person for the applicant.

3. The address of the site where the qualifying facility RENEWABLE ENERGY OPERATION will be located.

4. A detailed description of the qualifying facility RENEWABLE ENERGY OPERATION and fixed capital assets.

5. An estimate of the capital investment and number of employment positions at the qualifying facility RENEWABLE ENERGY OPERATION, including:

(a) A schedule of qualifying investments.

(b) A list of FULL-TIME employment positions, the estimated number of employees to be hired for the positions each year during the first five years of operation and the annual wages for each position, calculated without employee-related benefits.

6. A nonrefundable processing fee in an amount established DETERMINED by rule THE DEPARTMENT.

7. Other information as required by the department to determine eligibility for the tax incentives, and the amount of income tax credits, as prescribed by this section.

8. An affirmation, signed by an authorized executive representing the business, that the applicant:

(a) Agrees to furnish records of expenditures for qualifying investments to the department of commerce on request.

(b) Will continue in business at the qualifying facility RENEWABLE ENERGY OPERATION for ~~ten~~ FIVE full calendar years after postapproval for a tax incentive, other than for reasons beyond the control of the applicant.

(c) Agrees to furnish to the department of commerce ~~on request~~ information regarding the amount of tax benefits claimed each year.

(d) Authorizes the department of revenue to provide tax information to the department of commerce pursuant to section 42-2003 for the purpose of determining any inconsistency in information furnished by the applicant.

1 ~~(e) Consents to the disclosure by the department of commerce of the~~
2 ~~amount of tax benefits received each year in composite form, without specific~~
3 ~~identification of any taxpayer.~~

4 ~~(f)~~ (e) Agrees to allow site visits and audits to verify the
5 applicant's continuing qualification and the accuracy of information
6 submitted to the department of commerce.

7 ~~(g)~~ (f) Consents to the adjustment or recapture of any amount of
8 income tax credit OR PROPERTY TAX INCENTIVE due to noncompliance with this
9 section.

10 9. Letters of good standing from the department of revenue and the
11 county assessor TREASURER of the county in which the project is located
12 stating that the applicant is in good standing and is not delinquent in the
13 payment of taxes.

14 C. To be eligible for the tax incentives, the applicant must make new
15 capital investment in this state AFTER SEPTEMBER 30, 2009 in a manufacturing
16 facility or headquarters facility or any combination of qualifying
17 facilities, as follows:

18 1. The applicant may qualify for income tax credits pursuant to
19 section 43-1083.01 or 43-1164.01, as applicable, if:

20 (a) At least fifty-one per cent of the net new full-time employment
21 positions at the ~~facility~~ RENEWABLE ENERGY OPERATION pay a wage that equals
22 or exceeds one hundred twenty-five per cent of the median annual wage in this
23 state, as determined by the most recent annual department of commerce
24 occupational wage and employment estimates.

25 (b) All net new full-time employment positions include health
26 insurance coverage for the employees for which the applicant pays at least
27 eighty per cent of the premium or membership cost, ~~or an equivalent~~
28 ~~percentage of the cost for alternative health benefit models that offer~~
29 ~~standard comprehensive coverage.~~

30 2. The fixed capital assets shall be classified as class six for the
31 purposes of property taxation pursuant to section 42-12006, paragraph 9 if
32 the qualifying investment amounts to at least twenty-five million dollars, IF
33 THE APPLICANT PAYS AT LEAST EIGHTY PER CENT OF THE HEALTH INSURANCE COSTS OR
34 MEMBERSHIP COSTS FOR ALL NET NEW EMPLOYEES— AND if at least fifty-one per
35 cent of the net new full-time employment positions at the qualifying ~~facility~~
36 RENEWABLE ENERGY OPERATION pay a wage that equals:

37 (a) At least one hundred twenty-five, but less than two hundred, per
38 cent of the median annual wage in this state, as determined by the most
39 recent annual department of commerce occupational wage and employment
40 estimates, the property may be classified as class six for ten tax years.

41 (b) At least two hundred per cent of the median annual wage in this
42 state, as determined by the most recent annual department of commerce
43 occupational wage and employment estimates, the property may be classified as
44 class six for fifteen tax years.

1 D. Final eligibility for the tax incentives is subject to any
2 additional requirements prescribed by sections 42-12006, 43-1083.01 and
3 43-1164.01, as applicable.

4 E. An applicant may separately apply and qualify with respect to
5 investments for:

6 1. ~~Facilities~~ RENEWABLE ENERGY OPERATIONS in separate locations.

7 2. Separate expansions of a ~~facility~~ RENEWABLE ENERGY OPERATION.

8 F. To determine the amount of income tax credit to be preapproved to a
9 qualifying applicant, the department shall use one of the following
10 computations:

11 1. Ten per cent of the amount the applicant has projected in total
12 qualifying investment in ~~facilities~~ RENEWABLE ENERGY OPERATION meeting the
13 following minimum employment requirements:

14 (a) For renewable energy manufacturing operations, at least one and
15 one-half new full-time employment positions projected by the applicant for
16 each five hundred thousand dollar increment of capital investment.

17 (b) For renewable energy business headquarters, at least one new
18 full-time employment position projected by the applicant for each two hundred
19 thousand dollar increment of capital investment.

20 2. For other qualifying renewable energy investment, ten per cent of
21 the amount computed as follows:

22 (a) Five hundred thousand dollars for each one and one-half new
23 full-time employment positions projected by the applicant in new renewable
24 energy manufacturing operations.

25 (b) Two hundred thousand dollars for each new full-time employment
26 position projected by the applicant at a new renewable energy business
27 headquarters.

28 G. Beginning with income tax credits allocated for 2010, an approved
29 income tax credit:

30 ~~1. Offsets income tax liability for any taxable year within the~~
31 ~~taxpayer's applicable carryforward period pursuant to section 43-1083.01 or~~
32 ~~43-1164.01.~~

33 ~~2.~~ 1. Must be claimed on a timely filed original income tax return,
34 including extensions.

35 ~~3.~~ 2. Must be claimed in five equal installments as provided in
36 section 43-1083.01 or 43-1164.01.

37 H. The department shall establish a process for qualifying and
38 preapproving applicants for the tax incentives. The department shall not
39 preapprove an applicant as qualifying for tax incentives under this section
40 after December 31, 2014. Preapproval is based on:

41 1. Priority placement established by the date that the applicant files
42 its initial application with the department.

43 2. The availability of income tax credit capacity under the dollar
44 limit prescribed by subsection J of this section.

1 I. Within thirty days after receiving a complete and correct
2 application, the department shall review the application to determine whether
3 the applicant satisfies all of the criteria prescribed by this section and
4 either preapprove the project as qualifying for the purposes of the tax
5 incentives or provide reasons for its denial. The department of commerce
6 shall send copies of the preapproval to the department of revenue and the
7 applicable county assessor.

8 J. The department shall not preapprove income tax credits exceeding
9 seventy million dollars in any calendar year, except as provided by this
10 subsection and subsection K of this section. A preapproved amount applies
11 against the dollar limit for the year in which the application was submitted
12 regardless of whether the initial preapproval period extends into the
13 following year or years. If, at the end of any year, an unused balance
14 occurs under the dollar limit prescribed by this subsection:

15 1. The balance shall be allocated to renewable energy businesses that
16 successfully appeal the denial of approval under this section. Any amount of
17 income tax credits due to successful appeals that are not paid from an unused
18 balance at the end of any year shall be paid against the dollar limit in the
19 following year.

20 2. Any remaining unused balance shall be reallocated for the purposes
21 of this section in the following year.

22 K. The department shall reallocate the amount of income tax credits
23 that are voluntarily relinquished under subsection L of this section, that
24 lapse under subsection M of this section or that lapse under subsection O- P
25 of this section. The reallocation shall be to other renewable energy
26 businesses that applied in the original credit year based on priority
27 placement. Once reallocated, the amount of the credit applies against the
28 dollar limit of the original credit year regardless of the year in which the
29 reallocation occurs.

30 L. A taxpayer may voluntarily relinquish unused credit amounts.

31 M. Preapproval under this section lapses, the application is void and
32 the amount of the preapproved income tax credits ~~do~~ DOES not apply against
33 the dollar limit prescribed by subsection J of this section if, within twelve
34 months after preapproval, the renewable energy business fails to provide to
35 the department documentation of its expenditure of two hundred fifty thousand
36 dollars in qualifying investment or, if the period over which the qualifying
37 investment will be made exceeds twelve months, documentation of additional
38 expenditures as required in this subsection for each twelve month period.

39 N. Beginning in 2010, after October 31 of each year, if the department
40 has preapproved the maximum calendar year income tax credit amount pursuant
41 to subsection J of this section, the department may accept initial
42 applications for the next calendar year, but the preapproval of any
43 application pursuant to this subsection shall not be effective before the
44 first business day of the following calendar year.

O. BEFORE AN APPLICANT APPLIES FOR POSTAPPROVAL UNDER SUBSECTION P OF THIS SECTION, THE APPLICANT MUST ENTER INTO A WRITTEN MANAGED REVIEW AGREEMENT WITH THE DIRECTOR THAT ESTABLISHES THE REQUIREMENTS OF A MANAGED REVIEW TO BE CONDUCTED UNDER THIS SUBSECTION AT THE APPLICANT'S EXPENSE. THE MANAGED REVIEW MUST BE CONDUCTED BY A CERTIFIED PUBLIC ACCOUNTANT WHO IS SELECTED BY THE APPLICANT, WHO IS LICENSED IN THIS STATE AND WHO IS APPROVED BY THE DIRECTOR. THE CERTIFIED PUBLIC ACCOUNTANT AND THE FIRM THE CERTIFIED PUBLIC ACCOUNTANT IS AFFILIATED WITH SHALL NOT REGULARLY PERFORM SERVICES FOR THE APPLICANT OR ITS AFFILIATES. THE MANAGED REVIEW SHALL INCLUDE AN ANALYSIS OF THE APPLICANT'S INVOICES, CHECKS, ACCOUNTING RECORDS AND OTHER DOCUMENTS AND INFORMATION TO VERIFY ITS BASE INVESTMENT AND OTHER REQUIREMENTS PRESCRIBED BY SECTION 42-12006, 43-1083.01 OR 43-1164.01 TO CONFIRM THE AMOUNT OF CREDIT OR PROPERTY TAX INCENTIVE. THE CERTIFIED PUBLIC ACCOUNTANT SHALL FURNISH WRITTEN FINDINGS OF THE MANAGED REVIEW TO THE DIRECTOR. THE DIRECTOR SHALL REVIEW THE FINDINGS AND MAY EXAMINE RECORDS AND PERFORM OTHER REVIEWS THAT THE DIRECTOR CONSIDERS NECESSARY TO VERIFY THAT THE MANAGED REVIEW SUBSTANTIALLY CONFORMS TO THE TERMS OF THE MANAGED REVIEW AGREEMENT. THE DIRECTOR SHALL ACCEPT OR REJECT THE FINDINGS OF THE MANAGED REVIEW. IF THE DIRECTOR REJECTS ALL OR PART OF THE MANAGED REVIEW, THE DIRECTOR SHALL PROVIDE WRITTEN REASONS FOR THE REJECTION.

~~O.~~ P. When the ~~facility~~ RENEWABLE ENERGY OPERATION begins operations, a renewable energy business that was preapproved for income tax credits under this section shall apply to the department in writing for postapproval of the credits, ~~AND~~ submit documentation certifying the total amount and dates of the qualifying investments and identifying the fixed capital assets associated with the ~~facility~~ RENEWABLE ENERGY OPERATION incurred from the ~~date of preapproval~~ AND AFTER SEPTEMBER 30, 2009 THROUGH THE DATE OF APPLICATION FOR POSTAPPROVAL. From and after December 31, 2009, the department shall provide postapproval to a renewable energy business that it has met the eligibility requirements of this section and shall notify the department of revenue that the renewable energy business may claim the tax credits pursuant to ~~sections~~ SECTION 43-1083.01 ~~and~~ OR 43-1164.01. If the amount of qualifying investment actually spent is less than the amount preapproved for income tax credits, the preapproved amount not incurred lapses and does not apply against the dollar limit prescribed by subsection J of this section for that year. THE DEPARTMENT SHALL NOT ALLOW A CREDIT UNDER SECTION 43-1083.01 OR 43-1164.01 THAT EXCEEDS THE AMOUNT OF THE POSTAPPROVAL FOR THE PROJECT UNDER THIS SUBSECTION. FOR THE PURPOSES OF THIS SUBSECTION, "BEGINS OPERATIONS" MEANS:

1. A HEADQUARTERS FACILITY OPENS FOR PUBLIC BUSINESS.
2. A MANUFACTURING FACILITY BEGINS PRODUCING COMMERCIAL QUANTITIES OF USABLE PRODUCTS.

~~P.~~ Q. The department of commerce may rescind the business' ~~certification~~ POSTAPPROVAL if the business no longer meets the terms and conditions required for qualifying for the tax incentives. The department

1 may give special consideration, or allow temporary exemption from recapture
2 of tax benefits, in the case of extraordinary hardship due to factors beyond
3 the control of the qualifying business.

4 ~~Q.~~ R. If the department of commerce rescinds an applicant's
5 preapproval OR POSTAPPROVAL under subsection P- Q of this section, it shall
6 notify the department of revenue and the county assessor of the action and
7 the conditions of noncompliance. If the department of revenue obtains
8 information indicating a possible failure to qualify and comply, it shall
9 provide that information to the department of commerce. The department of
10 revenue may require the business to file appropriate amended tax returns
11 reflecting any recapture of income tax credits under section 43-1083.01 or
12 43-1164.01.

13 ~~R.~~ S. Preapproval and postapproval of a business for the purposes of
14 tax incentives under this section do not constitute or imply compliance with
15 any other provision of law or any regulatory rule, order, procedure, permit
16 or other measure required by law. To maintain qualification for tax
17 incentives under this section, a business must separately comply with all
18 environmental, employment and other regulatory measures.

19 ~~S.~~ T. For five years after postapproval for tax incentives under this
20 section, in any action involving the liquidation of the business assets or
21 relocation out of state this state claims the position of a secured creditor
22 of the business in the amount of income tax credits AND PROPERTY TAX
23 INCENTIVES the business received pursuant to section 42-12006, 43-1083.01 or
24 43-1164.01.

25 ~~T.~~ U. Any information gathered from A renewable energy business for
26 the purposes of this section is considered to be confidential taxpayer
27 information and shall be disclosed only as provided in section 42-2003,
28 subsection B, paragraph 12, except that the department shall publish the
29 following information in its annual report:

30 1. The name of each renewable energy business and the amount of income
31 tax credits preapproved for each qualifying investment.

32 2. The amount of credits ~~that were~~ postapproved with respect to each
33 qualifying investment.

34 ~~U.~~ V. The department shall:

35 1. Keep annual records of the information provided on applications for
36 renewable energy businesses. These records shall reflect a percentage
37 comparison of the annual amount of monies exempted or credited to qualifying
38 renewable energy businesses to the estimated amount of monies spent in this
39 state in the form of qualifying investments.

40 2. Maintain annual data on growth in this state of renewable energy
41 businesses and industry employment and wages.

42 3. Not later than April 30 of each year, prepare and publish a report
43 summarizing the information collected pursuant to this subsection. The
44 department shall make copies of the annual report available to the public on
45 request.

1 ~~V.~~ W. The department of commerce shall adopt rules and prescribe
2 forms and procedures as necessary for the purposes of this section. The
3 department of commerce and the department of revenue shall collaborate in
4 adopting rules as necessary to avoid duplication and inconsistencies while
5 accomplishing the intent and purposes of this section.

6 ~~W.~~ X. For the purposes of this section:

7 1. "Capital investment" means an expenditure to acquire, lease or
8 improve property that is used in operating a business, including land,
9 buildings, machinery and fixtures.

10 2. "Headquarters" means a principal central administrative office
11 where primary headquarters related functions and services are performed,
12 including financial, personnel, administrative, legal, planning and similar
13 business functions ~~are performed~~.

14 3. "Manufacturing" means fabricating, producing or manufacturing raw
15 or prepared materials into usable products, imparting new forms, qualities,
16 properties and combinations. Manufacturing does not include generating
17 electricity for off-site consumption.

18 4. "PRIMARILY ENGAGED" MEANS THAT MORE THAN FIFTY PER CENT OF A
19 COMPANY'S BUSINESS ACTIVITY AT A PARTICULAR FACILITY DIRECTLY INVOLVES
20 RENEWABLE ENERGY OPERATIONS, MEASURED BY REVENUES RECEIVED, EXPENSES
21 INCURRED, SQUARE FOOTAGE OR THE NUMBER OF INDIVIDUALS EMPLOYED.

22 ~~4.~~ 5. "Qualifying investment" means investment in land, buildings,
23 machinery and fixtures for expansion of an existing ~~facility~~ RENEWABLE ENERGY
24 OPERATION or establishment of a new ~~facility~~ RENEWABLE ENERGY OPERATION in
25 this state AFTER SEPTEMBER 30, 2009. Qualifying investment does not include
26 relocating an existing ~~facility~~ RENEWABLE ENERGY OPERATION in this state to
27 another location in this state without additional capital investment OF AT
28 LEAST TWO HUNDRED FIFTY THOUSAND DOLLARS.

29 6. "QUALIFYING RENEWABLE ENERGY OPERATION" MEANS THE FACILITY WHERE A
30 QUALIFYING INVESTMENT WAS MADE.

31 7. "RENEWABLE ENERGY" MEANS USABLE ENERGY, INCLUDING ELECTRICITY,
32 FUELS, GAS AND HEAT, PRODUCED THROUGH THE CONVERSION OF ENERGY PROVIDED BY
33 SUNLIGHT, WATER, WIND, GEOTHERMAL, HEAT, BIOMASS, BIOGAS, LANDFILL GAS OR
34 OTHER NONFOSSIL RENEWABLE RESOURCE.

35 8. "RENEWABLE ENERGY BUSINESS" MEANS A PERSON PRIMARILY ENGAGED IN THE
36 BUSINESS OF RENEWABLE ENERGY MANUFACTURING OPERATIONS OR RENEWABLE ENERGY
37 HEADQUARTERS OPERATIONS.

38 ~~5.~~ 9. "Renewable energy operations" are limited to manufacturers of,
39 and headquarters for, systems and components that are used or useful in
40 manufacturing renewable energy equipment for the generation, storage, testing
41 and research and development, transmission or distribution of electricity
42 from renewable resources, including specialized crates necessary to package
43 the renewable energy equipment manufactured at the ~~facility~~ QUALIFYING
44 RENEWABLE ENERGY OPERATION.

1 10. "RENEWABLE ENERGY RESOURCE" MEANS A RESOURCE THAT IS REPLACED BY
2 NATURAL AND ASSISTED PROCESSES AT A RATE THAT IS COMPARABLE TO OR FASTER THAN
3 THE RATE OF NATURAL DEPLETION AND CONSUMPTION BY HUMANS.

4 Sec. 2. Section 42-2003, Arizona Revised Statutes, is amended to read:
5 42-2003. Authorized disclosure of confidential information

6 A. Confidential information relating to:

7 1. A taxpayer may be disclosed to the taxpayer, its successor in
8 interest or a designee of the taxpayer who is authorized in writing by the
9 taxpayer. A principal corporate officer of a parent corporation may execute
10 a written authorization for a controlled subsidiary.

11 2. A corporate taxpayer may be disclosed to any principal officer, any
12 person designated by a principal officer or any person designated in a
13 resolution by the corporate board of directors or other similar governing
14 body.

15 3. A partnership may be disclosed to any partner of the partnership.
16 This exception does not include disclosure of confidential information of a
17 particular partner unless otherwise authorized.

18 4. An estate may be disclosed to the personal representative of the
19 estate and to any heir, next of kin or beneficiary under the will of the
20 decedent if the department finds that the heir, next of kin or beneficiary
21 has a material interest which will be affected by the confidential
22 information.

23 5. A trust may be disclosed to the trustee or trustees, jointly or
24 separately, and to the grantor or any beneficiary of the trust if the
25 department finds that the grantor or beneficiary has a material interest
26 which will be affected by the confidential information.

27 6. Any taxpayer may be disclosed if the taxpayer has waived any rights
28 to confidentiality either in writing or on the record in any administrative
29 or judicial proceeding.

30 7. The name and taxpayer identification numbers of persons issued
31 direct payment permits may be publicly disclosed.

32 B. Confidential information may be disclosed to:

33 1. Any employee of the department whose official duties involve tax
34 administration.

35 2. The office of the attorney general solely for its use in
36 preparation for, or in an investigation which may result in, any proceeding
37 involving tax administration before the department or any other agency or
38 board of this state, or before any grand jury or any state or federal court.

39 3. The department of liquor licenses and control for its use in
40 determining whether a spirituous liquor licensee has paid all transaction
41 privilege taxes and affiliated excise taxes incurred as a result of the sale
42 of spirituous liquor, as defined in section 4-101, at the licensed
43 establishment and imposed on the licensed establishments by this state and
44 its political subdivisions.

1 4. Other state tax officials whose official duties require the
2 disclosure for proper tax administration purposes if the information is
3 sought in connection with an investigation or any other proceeding conducted
4 by the official. Any disclosure is limited to information of a taxpayer who
5 is being investigated or who is a party to a proceeding conducted by the
6 official.

7 5. The following agencies, officials and organizations, if they grant
8 substantially similar privileges to the department for the type of
9 information being sought, pursuant to statute and a written agreement between
10 the department and the foreign country, agency, state, Indian tribe or
11 organization:

12 (a) The United States internal revenue service, alcohol and tobacco
13 tax and trade bureau of the United States treasury, United States bureau of
14 alcohol, tobacco, firearms and explosives of the United States department of
15 justice, United States drug enforcement agency and federal bureau of
16 investigation.

17 (b) A state tax official of another state.

18 (c) An organization of states, federation of tax administrators or
19 multistate tax commission that operates an information exchange for tax
20 administration purposes.

21 (d) An agency, official or organization of a foreign country with
22 responsibilities that are comparable to those listed in subdivision (a), (b)
23 or (c) of this paragraph.

24 (e) An agency, official or organization of an Indian tribal government
25 with responsibilities comparable to the responsibilities of the agencies,
26 officials or organizations identified in subdivision (a), (b) or (c) of this
27 paragraph.

28 6. The auditor general, in connection with any audit of the department
29 subject to the restrictions in section 42-2002, subsection D.

30 7. Any person to the extent necessary for effective tax administration
31 in connection with:

32 (a) The processing, storage, transmission, destruction and
33 reproduction of the information.

34 (b) The programming, maintenance, repair, testing and procurement of
35 equipment for purposes of tax administration.

36 8. The office of administrative hearings relating to taxes
37 administered by the department pursuant to section 42-1101, but the
38 department shall not disclose any confidential information:

39 (a) Regarding income tax, withholding tax or estate tax.

40 (b) On any tax issue relating to information associated with the
41 reporting of income tax, withholding tax or estate tax.

42 9. The United States treasury inspector general for tax administration
43 for the purpose of reporting a violation of internal revenue code section
44 7213A (26 United States Code section 7213A), unauthorized inspection of
45 returns or return information.

1 10. The financial management service of the United States treasury
2 department for use in the treasury offset program.

3 11. The United States treasury department or its authorized agent for
4 use in the state income tax levy program and in the electronic federal tax
5 payment system.

6 12. The department of commerce for its use in:

7 (a) Qualifying motion picture production companies for the tax
8 incentives provided for motion picture production under chapter 5 of this
9 title and sections 43-1075 and 43-1163.

10 (b) Qualifying applicants for the motion picture infrastructure
11 project tax credits under sections 43-1075.01 and 43-1163.01.

12 (c) Qualifying renewable energy operations for the tax incentives
13 under sections 42-12006, 43-1083.01 and 43-1164.01.

14 (d) Fulfilling its annual reporting responsibility pursuant to section
15 41-1511, subsections T- U and U- V and section 41-1517, subsections S and T.

16 13. A prosecutor for purposes of section 32-1164, subsection C.

17 14. The state fire marshal for use in determining compliance with and
18 enforcing title 41, chapter 16, article 3.1.

19 C. Confidential information may be disclosed in any state or federal
20 judicial or administrative proceeding pertaining to tax administration
21 pursuant to the following conditions:

22 1. One or more of the following circumstances must apply:

23 (a) The taxpayer is a party to the proceeding.

24 (b) The proceeding arose out of, or in connection with, determining
25 the taxpayer's civil or criminal liability, or the collection of the
26 taxpayer's civil liability, with respect to any tax imposed under this title
27 or title 43.

28 (c) The treatment of an item reflected on the taxpayer's return is
29 directly related to the resolution of an issue in the proceeding.

30 (d) Return information directly relates to a transactional
31 relationship between a person who is a party to the proceeding and the
32 taxpayer and directly affects the resolution of an issue in the proceeding.

33 2. Confidential information may not be disclosed under this subsection
34 if the disclosure is prohibited by section 42-2002, subsection C or D.

35 D. Identity information may be disclosed for purposes of notifying
36 persons entitled to tax refunds if the department is unable to locate the
37 persons after reasonable effort.

38 E. The department, upon the request of any person, shall provide the
39 names and addresses of bingo licensees as defined in section 5-401, verify
40 whether or not a person has a privilege license and number, a distributor's
41 license and number or a withholding license and number or disclose the
42 information to be posted on the department's web site or otherwise publicly
43 accessible pursuant to section 42-1124, subsection F and section 42-3201,
44 subsection A.

1 F. A department employee, in connection with the official duties
2 relating to any audit, collection activity or civil or criminal
3 investigation, may disclose return information to the extent that disclosure
4 is necessary to obtain information which is not otherwise reasonably
5 available. These official duties include the correct determination of and
6 liability for tax, the amount to be collected or the enforcement of other
7 state tax revenue laws.

8 G. If an organization is exempt from this state's income tax as
9 provided in section 43-1201 for any taxable year, the name and address of the
10 organization and the application filed by the organization upon which the
11 department made its determination for exemption together with any papers
12 submitted in support of the application and any letter or document issued by
13 the department concerning the application are open to public inspection.

14 H. Confidential information relating to transaction privilege tax, use
15 tax, severance tax, jet fuel excise and use tax and rental occupancy tax may
16 be disclosed to any county, city or town tax official if the information
17 relates to a taxpayer who is or may be taxable by the county, city or town.
18 Any taxpayer information released by the department to the county, city or
19 town:

20 1. May only be used for internal purposes.

21 2. May not be disclosed to the public in any manner that does not
22 comply with confidentiality standards established by the department. The
23 county, city or town shall agree in writing with the department that any
24 release of confidential information that violates the confidentiality
25 standards adopted by the department will result in the immediate suspension
26 of any rights of the county, city or town to receive taxpayer information
27 under this subsection.

28 I. The department may disclose statistical information gathered from
29 confidential information if it does not disclose confidential information
30 attributable to any one taxpayer. In order to comply with the requirements
31 of section 42-5029, subsection A, paragraph 3, the department may disclose to
32 the state treasurer statistical information gathered from confidential
33 information, even if it discloses confidential information attributable to a
34 taxpayer.

35 J. The department may disclose the aggregate amounts of any tax
36 credit, tax deduction or tax exemption enacted after January 1, 1994.
37 Information subject to disclosure under this subsection shall not be
38 disclosed if a taxpayer demonstrates to the department that such information
39 would give an unfair advantage to competitors.

40 K. Except as provided in section 42-2002, subsection C, confidential
41 information, described in section 42-2001, paragraph 2, subdivision (a), item
42 (iii), may be disclosed to law enforcement agencies for law enforcement
43 purposes.

1 L. The department may provide transaction privilege tax license
2 information to property tax officials in a county for the purpose of
3 identification and verification of the tax status of commercial property.

4 M. The department may provide transaction privilege tax, luxury tax,
5 use tax, property tax and severance tax information to the ombudsman-citizens
6 aide pursuant to title 41, chapter 8, article 5.

7 N. Except as provided in section 42-2002, subsection D, a court may
8 order the department to disclose confidential information pertaining to a
9 party to an action. An order shall be made only upon a showing of good cause
10 and that the party seeking the information has made demand upon the taxpayer
11 for the information.

12 O. This section does not prohibit the disclosure by the department of
13 any information or documents submitted to the department by a bingo licensee.
14 Before disclosing the information the department shall obtain the name and
15 address of the person requesting the information.

16 P. If the department is required or permitted to disclose confidential
17 information, it may charge the person or agency requesting the information
18 for the reasonable cost of its services.

19 Q. Except as provided in section 42-2002, subsection D, the department
20 of revenue shall release confidential information as requested by the
21 department of economic security pursuant to section 42-1122 or 46-291.
22 Information disclosed under this subsection is limited to the same type of
23 information that the United States internal revenue service is authorized to
24 disclose under section 6103(1)(6) of the internal revenue code.

25 R. Except as provided in section 42-2002, subsection D, the department
26 of revenue shall release confidential information as requested by the courts
27 and clerks of the court pursuant to section 42-1122.

28 S. To comply with the requirements of section 42-5031, the department
29 may disclose to the state treasurer, to the county stadium district board of
30 directors and to any city or town tax official that is part of the county
31 stadium district confidential information attributable to a taxpayer's
32 business activity conducted in the county stadium district.

33 T. The department shall release confidential information as requested
34 by the attorney general for purposes of determining compliance with and
35 enforcing section 44-7101, the master settlement agreement referred to
36 therein and subsequent agreements to which the state is a party that amend or
37 implement the master settlement agreement. Information disclosed under this
38 subsection is limited to luxury tax information relating to tobacco
39 manufacturers, distributors, wholesalers and retailers and information
40 collected by the department pursuant to section 44-7101(2)(j).

41 U. For proceedings before the department, the office of administrative
42 hearings, the board of tax appeals or any state or federal court involving
43 penalties that were assessed against a return preparer or electronic return
44 preparer pursuant to section 42-1103.02 or 42-1125.01, confidential
45 information may be disclosed only before the judge or administrative law

1 judge adjudicating the proceeding, the parties to the proceeding and the
2 parties' representatives in the proceeding prior to its introduction into
3 evidence in the proceeding. The confidential information may be introduced
4 as evidence in the proceeding only if the taxpayer's name, the names of any
5 dependents listed on the return, all social security numbers, the taxpayer's
6 address, the taxpayer's signature and any attachments containing any of the
7 foregoing information are redacted and if either:

8 1. The treatment of an item reflected on such return is or may be
9 related to the resolution of an issue in the proceeding.

10 2. Such return or return information relates or may relate to a
11 transactional relationship between a person who is a party to the proceeding
12 and the taxpayer which directly affects the resolution of an issue in the
13 proceeding.

14 V. The department may disclose to the attorney general confidential
15 information received under section 44-7111 and requested by the attorney
16 general for purposes of determining compliance with and enforcing section
17 44-7111. The department and attorney general shall share with each other the
18 information received under section 44-7111, and may share the information
19 with other federal, state or local agencies only for the purposes of
20 enforcement of section 44-7101, section 44-7111 or corresponding laws of
21 other states.

22 W. The department may provide the name and address of qualifying
23 hospitals and qualifying health care organizations, as defined in section
24 42-5001, to a business classified and reporting transaction privilege tax
25 under the utilities classification."

26 Sec. 3. Section 42-12057, Arizona Revised Statutes, is amended to
27 read:

28 42-12057. Criteria for renewable energy property

29 A. To qualify for the classification as class six pursuant to section
30 42-12006, paragraph 9, the owner of a manufacturing facility or headquarters
31 facility must be certified pursuant to section 41-1511, subsection C,
32 ~~paragraph 2~~ and must provide documentation to the county assessor each year
33 that the facility is ~~exclusively~~ PRIMARILY dedicated to renewable energy
34 manufacturing or regional, national or global renewable energy business
35 headquarters operations.

36 B. For the purposes of this section, renewable energy ~~projects~~
37 OPERATIONS are limited to manufacturers of, and headquarters for, systems and
38 components that are used or useful in manufacturing renewable energy
39 equipment for the generation, storage, testing and research and development,
40 transmission or distribution of electricity from renewable resources,
41 including specialized crates necessary to package the renewable energy
42 equipment manufactured at the facility.

1 Sec. 4. Section 43-1083.01, Arizona Revised Statutes, is amended to
2 read:

3 43-1083.01. Credit for renewable energy industry

4 A. For taxable years beginning from and after December 31, 2009
5 through December 31, 2014, a credit is allowed against the taxes imposed by
6 this title for qualified investment and employment in expanding or locating
7 qualified renewable energy operations in this state. To qualify for the
8 credit, the taxpayer must invest in renewable energy manufacturing, or in new
9 regional, national or global renewable energy business headquarters, in this
10 state and produce new full-time employment positions where the job duties are
11 performed at the location of the qualifying investment. The taxpayer must
12 meet the employee compensation and employee health benefit requirements
13 prescribed by section 41-1511.

14 B. The amount of the credit is computed as follows:

15 1. Ten per cent of the taxpayer's total capital investment in projects
16 meeting the following minimum employment requirements:

17 (a) For qualifying renewable energy manufacturing operations, at least
18 one and one-half new full-time employment positions for each five hundred
19 thousand dollar increment of capital investment.

20 (b) For qualifying renewable energy business headquarters, at least
21 one new full-time employment position for each two hundred thousand dollar
22 increment of capital investment.

23 2. For other qualifying renewable energy investment, ten per cent of
24 the amount computed as follows:

25 (a) Five hundred thousand dollars for each one and one-half new
26 full-time employment positions in new renewable energy manufacturing
27 operations.

28 (b) Two hundred thousand dollars for each new full-time employment
29 position at a new renewable energy business headquarters.

30 (c) The amount of credit under this paragraph shall not exceed ten per
31 cent of the amount of the taxpayer's total capital investment.

32 3. THE AMOUNT OF THE CREDIT SHALL NOT EXCEED THE POSTAPPROVAL AMOUNT
33 DETERMINED BY THE DEPARTMENT OF COMMERCE UNDER SECTION 41-1511, SUBSECTION P.

34 ~~3.~~ 4. The credit amount computed under paragraph 1 or 2 of this
35 subsection is apportioned, and the taxpayer shall claim the credit in five
36 equal annual installments in each of five consecutive taxable years.

37 ~~C. Credits are allowed in each taxable year under this section and~~
38 ~~section 43-1164.01 on a first come, first served basis. The department shall~~
39 ~~not allow tax credits under this section and section 43-1164.01 that exceed~~
40 ~~in the aggregate a total of seventy million dollars in any fiscal year,~~
41 ~~except that if less than the maximum dollar amount is claimed in any fiscal~~
42 ~~year, the unused credit amount may be carried over to the following year.~~

43 ~~D.~~ C. To claim the credit the taxpayer must:

44 1. Conduct a business that qualifies under section 41-1511.

1 2. RECEIVE PREAPPROVAL AND POSTAPPROVAL FROM THE DEPARTMENT OF
2 COMMERCE PURSUANT TO SECTION 41-1511.

3 ~~2-~~ 3. Submit a copy of a current and valid certification of
4 qualification issued to the taxpayer by the department of commerce.

5 ~~E-~~ D. To be counted for the purposes of the credit, an employee must
6 have been employed at the qualifying ~~business location~~ FACILITY for at least
7 ninety days during the taxable year in a permanent full-time employment
8 position of at least one thousand seven hundred fifty hours per year. An
9 employee who is hired during the last ninety days of the taxable year shall
10 be considered a new employee during the next taxable year. To be counted for
11 the purposes of the credit during the first taxable year of employment, the
12 employee must not have been previously employed by the taxpayer within twelve
13 months before the current date of hire. The terms of employment must comply
14 in all cases with the requirements of section 41-1511 and certification by
15 the department of commerce.

16 E. CO-OWNERS OF A BUSINESS, INCLUDING PARTNERS IN A PARTNERSHIP,
17 MEMBERS OF A LIMITED LIABILITY COMPANY AND SHAREHOLDERS OF AN S CORPORATION,
18 AS DEFINED IN SECTION 1361 OF THE INTERNAL REVENUE CODE, MAY EACH CLAIM ONLY
19 THE PRO RATA SHARE OF THE CREDIT ALLOWED UNDER THIS SECTION BASED ON THE
20 OWNERSHIP INTEREST. THE TOTAL OF THE CREDITS ALLOWED ALL OWNERS OF THE
21 BUSINESS MAY NOT EXCEED THE AMOUNT THAT WOULD HAVE BEEN ALLOWED FOR A SOLE
22 OWNER OF THE BUSINESS.

23 F. If the allowable tax credit for a taxable year exceeds the income
24 taxes otherwise due on the claimant's income, or if there are no state income
25 taxes due on the claimant's income, the amount of the claim not used as an
26 offset against income taxes shall be paid to the taxpayer in the same manner
27 as a refund under section 42-1118. Refunds made pursuant to this subsection
28 are subject to setoff under section 42-1122. IF THE DEPARTMENT DETERMINES
29 THAT A REFUND IS INCORRECT OR INVALID, THE EXCESS REFUND MAY BE TREATED AS A
30 TAX DEFICIENCY PURSUANT TO SECTION 42-1108.

31 G. Except as provided by subsection H of this section, if, within ~~ten~~
32 FIVE taxable years after first receiving a credit pursuant to this section,
33 the certification of qualification of a business is terminated or revoked
34 under section 41-1511, other than for reasons beyond the control of the
35 business as determined by the department of commerce, the taxpayer is
36 ~~permanently~~ disqualified from credits under this section in subsequent
37 taxable years. ~~and~~ ON A DETERMINATION THAT THE TAXPAYER HAS COMMITTED FRAUD
38 OR RELOCATED OUTSIDE OF THIS STATE WITHIN FIVE TAXABLE YEARS OF FIRST
39 RECEIVING A CREDIT PURSUANT TO THIS SECTION, the credits allowed the taxpayer
40 in all taxable years pursuant to this section are subject to recapture
41 pursuant to this subsection. This subsection applies only in the case of the
42 termination or revocation of a certification of qualification under section
43 41-1511. This subsection does not apply if, in any taxable year, a taxpayer
44 otherwise does not qualify for or fails to claim the credit under this
45 section. The recapture of credits is computed by increasing the amount of

1 taxes imposed in the year following the year of termination or revocation by
2 the full amount of all credits previously allowed under this section.

3 H. A taxpayer who claims a credit under section 43-1074, 43-1077 or
4 43-1079 may not claim a credit under this section with respect to the same
5 full-time employment positions.

6 I. The department of revenue shall adopt rules and prescribe forms and
7 procedures as necessary for the purposes of this section. The department of
8 revenue and the department of commerce shall collaborate in adopting rules as
9 necessary to avoid duplication and contradictory requirements while
10 accomplishing the intent and purposes of this section.

11 J. For the purposes of this section, renewable energy operations are
12 limited to manufacturers of, and headquarters for, systems and components
13 that are used or useful in manufacturing renewable energy equipment for the
14 generation, storage, testing and research and development, transmission or
15 distribution of electricity from renewable resources, including specialized
16 crates necessary to package the renewable energy equipment manufactured at
17 the facility.

18 Sec. 5. Section 43-1164.01, Arizona Revised Statutes, is amended to
19 read:

20 43-1164.01. Credit for renewable energy industry

21 A. For taxable years beginning from and after December 31, 2009
22 through December 31, 2014, a credit is allowed against the taxes imposed by
23 this title for qualified investment and employment in expanding or locating
24 qualified renewable energy operations in this state. To qualify for the
25 credit, the taxpayer must invest in renewable energy manufacturing, or in new
26 regional, national or global renewable energy business headquarters, in this
27 state and produce new full-time employment positions where the job duties are
28 performed at the location of the qualifying investment. The taxpayer must
29 meet the employee compensation and employee health benefit requirements
30 prescribed by section 41-1511.

31 B. The amount of the credit is computed as follows:

32 1. Ten per cent of the taxpayer's total capital investment in projects
33 meeting the following minimum employment requirements:

34 (a) For qualifying renewable energy manufacturing operations, at least
35 one and one-half new full-time employment positions for each five hundred
36 thousand dollar increment of capital investment.

37 (b) For qualifying renewable energy business headquarters, at least
38 one new full-time employment position for each two hundred thousand dollar
39 increment of capital investment.

40 2. For other qualifying renewable energy investment, ten per cent of
41 the amount computed as follows:

42 (a) Five hundred thousand dollars for each one and one-half new
43 full-time employment positions in new renewable energy manufacturing
44 operations.

1 (b) Two hundred thousand dollars for each new full-time employment
2 position at a new renewable energy business headquarters.

3 (c) The amount of credit under this paragraph shall not exceed ten per
4 cent of the amount of the taxpayer's total capital investment.

5 3. THE AMOUNT OF THE CREDIT SHALL NOT EXCEED THE POSTAPPROVAL AMOUNT
6 DETERMINED BY THE DEPARTMENT OF COMMERCE UNDER SECTION 41-1511, SUBSECTION P.

7 ~~3.~~ 4. The credit amount computed under paragraph 1 or 2 of this
8 subsection is apportioned, and the taxpayer shall claim the credit in five
9 equal annual installments in each of five consecutive taxable years.

10 ~~C. Credits are allowed in each taxable year under this section and~~
11 ~~section 43-1083.01 on a first come, first served basis. The department shall~~
12 ~~not allow tax credits under this section and section 43-1083.01 that exceed~~
13 ~~in the aggregate a total of seventy million dollars in any fiscal year,~~
14 ~~except that if less than the maximum dollar amount is claimed in any fiscal~~
15 ~~year, the unused credit amount may be carried over to the following year.~~

16 ~~D.~~ C. To claim the credit the taxpayer must:

17 1. Conduct a business that qualifies under section 41-1511.

18 2. RECEIVE PREAPPROVAL AND POSTAPPROVAL FROM THE DEPARTMENT OF
19 COMMERCE PURSUANT TO SECTION 41-1511.

20 ~~2.~~ 3. Submit a copy of a current and valid certification of
21 qualification issued to the taxpayer by the department of commerce.

22 ~~E.~~ D. To be counted for the purposes of the credit, an employee must
23 have been employed at the qualifying business location FACILITY for at least
24 ninety days during the taxable year in a permanent full-time employment
25 position of at least one thousand seven hundred fifty hours per year. An
26 employee who is hired during the last ninety days of the taxable year shall
27 be considered a new employee during the next taxable year. To be counted for
28 the purposes of the credit during the first taxable year of employment, the
29 employee must not have been previously employed by the taxpayer within twelve
30 months before the current date of hire. The terms of employment must comply
31 in all cases with the requirements of section 41-1511 and certification by
32 the department of commerce.

33 E. CO-OWNERS OF A BUSINESS, INCLUDING CORPORATE PARTNERS IN A
34 PARTNERSHIP AND MEMBERS OF A LIMITED LIABILITY COMPANY, MAY EACH CLAIM ONLY
35 THE PRO RATA SHARE OF THE CREDIT ALLOWED UNDER THIS SECTION BASED ON THE
36 OWNERSHIP INTEREST. THE TOTAL OF THE CREDITS ALLOWED ALL OWNERS OF THE
37 BUSINESS MAY NOT EXCEED THE AMOUNT THAT WOULD HAVE BEEN ALLOWED FOR A SOLE
38 OWNER OF THE BUSINESS.

39 F. If the allowable tax credit for a taxable year exceeds the income
40 taxes otherwise due on the claimant's income, or if there are no state income
41 taxes due on the claimant's income, the amount of the claim not used as an
42 offset against income taxes shall be paid to the taxpayer in the same manner
43 as a refund under section 42-1118. Refunds made pursuant to this subsection
44 are subject to setoff under section 42-1122. IF THE DEPARTMENT DETERMINES

1 THAT A REFUND IS INCORRECT OR INVALID, THE EXCESS REFUND MAY BE TREATED AS A
2 TAX DEFICIENCY PURSUANT TO SECTION 42-1108.

3 G. Except as provided by subsection H of this section, if, within ten
4 FIVE taxable years after first receiving a credit pursuant to this section,
5 the certification of qualification of a business is terminated or revoked
6 under section 41-1511, other than for reasons beyond the control of the
7 business as determined by the department of commerce, the taxpayer is
8 permanently disqualified from credits under this section in subsequent
9 taxable years. and ON A DETERMINATION THAT THE TAXPAYER HAS COMMITTED FRAUD
10 OR RELOCATED OUTSIDE OF THIS STATE WITHIN FIVE TAXABLE YEARS OF FIRST
11 RECEIVING A CREDIT PURSUANT TO THIS SECTION, the credits allowed the taxpayer
12 in all taxable years pursuant to this section are subject to recapture
13 pursuant to this subsection. This subsection applies only in the case of the
14 termination or revocation of a certification of qualification under section
15 41-1511. This subsection does not apply if, in any taxable year, a taxpayer
16 otherwise does not qualify for or fails to claim the credit under this
17 section. The recapture of credits is computed by increasing the amount of
18 taxes imposed in the year following the year of termination or revocation by
19 the full amount of all credits previously allowed under this section.

20 H. A taxpayer who claims a credit under section 43-1161, 43-1165 or
21 43-1167 may not claim a credit under this section with respect to the same
22 full-time employment positions.

23 I. The department of revenue shall adopt rules and prescribe forms and
24 procedures as necessary for the purposes of this section. The department of
25 revenue and the department of commerce shall collaborate in adopting rules as
26 necessary to avoid duplication and contradictory requirements while
27 accomplishing the intent and purposes of this section.

28 J. For the purposes of this section, renewable energy operations are
29 limited to manufacturers of, and headquarters for, systems and components
30 that are used or useful in manufacturing renewable energy equipment for the
31 generation, storage, testing and research and development, transmission or
32 distribution of electricity from renewable resources, including specialized
33 crates necessary to package the renewable energy equipment manufactured at
34 the facility.

35 Sec. 6. Retroactivity

36 This act is effective retroactively to from and after September 30,
37 2009.

APPROVED BY THE GOVERNOR MAY 10, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 10, 2010.